

REMARKS

In the Office Action, the Examiner rejected claims 1-4 and 9-13 under 35 U.S.C. § 101 as directed to non-statutory subject matter; rejected claims 1-3 and 5-13 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,267,789 to Besaw et al. ("*Besaw*") in view of U.S. Patent No. 6,502,131 to Vaid et al. ("*Vaid*"); rejected claim 4 under 35 U.S.C. § 103(a) as unpatentable over *Besaw* in view of *Vaid* and further in view of Microsoft Excel 2000 ("*Excel*"); and rejected claims 1, 3, and 5 for nonstatutory double patenting.

By this amendment, Applicants propose to amend claims 1-4 and 9-13. Based on the proposed amendments and the following remarks, Applicants respectfully traverse the rejections presented in the Office Action.

I. The Rejection of Claims 1-4 and 9-13 Under 35 U.S.C. § 101

The Examiner indicates that claim 1 is not statutory because the specification "provide[s] evidence that [A]pplicant intends the 'medium' to use signals" (Office Action at p. 2). Amended claim 1 recites a "computer-readable storage device" (emphasis added) and therefore does not include nonstatutory signals. Claims 2-4 and 9-13 were apparently rejected solely due to their dependence from claim 1. Therefore, Applicants respectfully request the Examiner to withdraw the rejection of claims 1-4 and 9-13 under 35 U.S.C. § 101.

II. The Rejection of Claims 1-3 and 5-13 under 35 U.S.C. § 103(a)

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. See

M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007). Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. See id. “A conclusion of obviousness requires that the reference(s) relied upon be enabling in that it put the public in possession of the claimed invention.” M.P.E.P. § 2145. Furthermore, “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art” at the time the invention was made. M.P.E.P. § 2143.01(III), internal citation omitted. Moreover, “[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” M.P.E.P. § 2141.02(I), internal citations omitted (emphasis in original).

“[T]he framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1996) . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art.” M.P.E.P. § 2141(II). “Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.” M.P.E.P. § 2141(III). In this application, a *prima facie* case of obviousness has not been established because the Office Action has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the claimed invention and the prior art. Accordingly, the Office Action has failed to clearly

articulate a reason why the prior art would have rendered the claimed invention obvious to one of ordinary skill in the art.

A. Claims 1-3 and 9-13

Claim 1 recites, for example, “a computer-readable storage device comprising instructions for causing a processor to display a graphical user interface (GUI), the GUI comprising a graph with edges and vertices, the vertices representing grid nodes wherein each the edges represents an association between two of the grid managers” (emphasis added). *Besaw* and *Vaid* fail to render obvious, among other things, the claimed “edges represent[ing] an association between two [] grid managers.”

Besaw discloses a “system for automatically laying out and graphically displaying the topology of a computer network system” (*Besaw*). *Besaw* also discloses laying out nodes as vertices, and connections between the nodes as edges between the nodes, in graphical form (*Besaw*, col. 2, lines 16-20). The Examiner relies on *Besaw*’s edges representing connections as allegedly corresponding to the claimed “edges” (Office Action at p. 3). However, the claimed edges “represent[] an association between two [] grid managers.” In contrast, *Besaw* does not disclose a grid manager at all, as the Examiner concedes (Office Action at p. 4). Therefore, *Besaw* fails to teach or suggest the claimed “edges represent[ing] an association between two [] grid managers,” as recited by independent claim 1.

Vaid fails to cure the deficiencies of *Besaw*. *Vaid* discloses a “method and system (100) for monitoring or profiling quality of service within one or more information sources in a network of computers” (*Vaid*, abstract). *Vaid* also discloses a graphical

user interface including cumulative traffic statistics in a network, services on the network, and the amount of data transferred over the network (*Vaid*, FIG. 9 and col. 18, lines 30-50). However, *Vaid* does not disclose a grid manager.

The Examiner does not directly address *Vaid*'s failure to disclose a grid manager. Instead, the Examiner makes the unsupported allegation that "grid networks and managers are functionally equivalent to a distributed system networks and managers" (Office Action at p. 4). The Examiner is incorrect. As stated on p. 1 of Applicants' specification:

More specifically, grid computing is a form of distributed system wherein computing resources are shared across networks. Grid computing enables the selection, aggregation, and sharing of information resources resident in multiple administrative domains and across geographic areas. These information resources are shared, for example, based upon their availability, capability, and cost, as well as a user's quality of service (QoS) requirements. Grid computing can mean reduced cost of ownership, aggregated and improved efficiency of computing, data, and storage resources, and enablement of virtual organizations for applications and data sharing.

(emphasis added). Therefore, grid managers in a grid computing system are not simply "functionally equivalent" to any network manager. Moreover, as the Examiner's assertions are entirely unsupported by any citation to the art, the Examiner's assertions amount to a taking of Official Notice.

Applicants respectfully remind the Examiner of the provisions of M.P.E.P. § 2144.03 and the precedents provided in *Dickinson v Zurko*, 527 U.S. 150, 50 USPQ2d 1930 (1999) and *In re Ahlert*, 424 F.2d, 1088, 1091, 165 USPQ 418, 420 (CCPA 1970). An Official Notice rejection is improper unless the facts asserted are

well-known or common knowledge in the art, and capable of instant and unquestionable demonstration as being well known. It is never appropriate to rely solely on “common knowledge without evidentiary support in the record as the principal evidence upon which a rejection is based. Accordingly, Applicants traverse the Examiner’s Official Notice. The claimed “GUI comprising a graph with edges and vertices, the vertices representing grid nodes wherein each the edges represents an association between two of the grid managers” (emphasis added) is not well-known or common knowledge in the art. Applicants therefore request that the Examiner either cite a competent prior art reference in substantiation of these conclusions, or else withdraw the rejections.

The Examiner also takes Official Notice in stating that “it is well known in the art for network nodes to represent computers, applications, other networks, and network managers” (Office Action at p. 3). While *Besaw* discloses allowing “a computer system 100 to act as a node on a network” and displaying nodes and networks in graphical form (*Besaw*, col. 5, lines 3-56 and FIGS. 2-5), *Besaw* provides no support for the proposition that it is well known for network nodes to represent either applications or network managers. Further, the Examiner’s Official Notice with respect to applications or network managers is unsupported by any prior art reference cited in the Office Action.

Indeed, the Examiner has not cited a single reference including a GUI or other graphical representation of a grid manager. The claimed “GUI comprising a graph with edges and vertices, the vertices representing grid nodes wherein each the edges represents an association between two of the grid managers” (emphasis added) is not well-known or common knowledge in the art. Applicants therefore request that the

Examiner either cite a competent prior art reference in substantiation of these conclusions, or else withdraw the rejections.

As explained above, the Office Action has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the claimed invention and the prior art. Moreover, the Examiner has improperly relied upon Official Notice. Accordingly, no reason has been clearly articulated as to why claim 1 would have been obvious to one of ordinary skill in view of *Besaw* and *Vaid*. Therefore, a *prima facie* case of obviousness has not been established for independent claim 1 for at least this reason.

Claims 2-4 and 9-13 depend from claim 1. Accordingly, no *prima facie* case of obviousness has been established with respect to these claims at least due to their dependence.

Claim 9 is further distinguishable from *Besaw* and *Vaid*. Claim 9 recites “[t]he computer-readable storage device according to claim 1, wherein the vertices display a network address for the corresponding grid node” (emphasis added). The Examiner relies upon FIG. 2 of *Besaw*, alleging that “each node is assigned a network address” (Office Action at p. 11). Even assuming the Examiner is correct that *Besaw*’s nodes are “assigned” network addresses, the network addresses are not displayed. Therefore, *Besaw* does not render obvious “wherein the vertices display a network address for the corresponding grid node” (emphasis added) as recited by dependent claim 9. *Vaid* fails to cure the deficiencies of *Besaw*.

B. The Rejection of Claims 5-8

Claim 5 recites a method comprising, for example, "sending a first query to the first grid manager requesting a first list of grid managers having an inferior relation to the first node," "receiving a response from the first grid manager to the first query," and "displaying nodes corresponding to the grid managers in the first list and drawing vectors from the first grid manager to the grid managers in the first list of grid managers."

As discussed, both *Besaw* and *Vaid* fail to teach or suggest a "grid manager" and therefore both *Besaw* and *Vaid* fail to render obvious these recitations of claim 5. Moreover, the Examiner again improperly relies upon Official Notice for at least the same reasons discussed above with respect to claim 1 (Office Action at pp. 5-6).

Moreover, the Examiner relies upon FIGS. 6 and 7 of *Besaw* in addressing the claimed "first list of grid managers having an inferior relation to the first node" (Office Action at p. 6), and *Besaw* discloses that FIGS. 6 and 7 are hierarchy diagrams of modules of the invention (*Besaw*, col. 5, lines 57-59). The Examiner attempts to relate FIGS. 6 and 7 of *Besaw* to the claimed "inferior relation" by stating that "it is well known in the art that hierarchy systems have superior and inferior relations."

However, *Besaw*'s hierarchy is of modules of the invention, not grid managers or any other analogous structure. Moreover, as discussed above with respect to claim 1, the Examiner relies upon *Besaw*'s nodes, and not modules, as corresponding to the claimed grid managers and nodes.

Referring to FIG. 5, *Besaw* discloses no hierarchical relationship between the nodes or computer systems that they represent. As *Besaw* explains: "FIG. 5 shows a bus view of a segment of a network ..." (*Besaw*, col. 4, lines 16-18). There is no support in *Besaw* or elsewhere for the "bus" view being "hierarchical." Therefore, *Besaw* fails to render obvious "displaying nodes corresponding to the grid managers in the first list [of grid managers having an inferior relation to the first node] and drawing vectors from the first grid manager to the grid managers in the first list of grid managers" as recited by independent claim 5.

Further, Applicants respectfully traverse the Examiner's taking of Official Notice with respect to claim 5. The Examiner states "it is well known in the art that hierarchy systems have superior and inferior relations" (Office Action at p. 6). However, the claimed "inferior relation" is between grid managers and a first node. As already discussed, the Examiner has not provided a single reference disclosing a GUI or other display of a grid manager. Further, the claimed "displaying nodes corresponding to the grid managers in the first list [of grid managers having an inferior relation to the first node] and drawing vectors from the first grid manager to the grid managers in the first list of grid managers" (emphasis added) is not well-known or common knowledge in the art. Applicants therefore request that the Examiner either cite a competent prior art reference in substantiation of these conclusions, or else withdraw the rejections.

As explained above, the Office Action has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the claimed invention and the prior art. Moreover, the Examiner has improperly relied upon

Official Notice. Accordingly, no reason has been clearly articulated as to why claim 5 would have been obvious to one of ordinary skill in view of *Besaw* and *Vaid*. Therefore, a *prima facie* case of obviousness has not been established for independent claim 5 for at least this reason.

Claims 6-8 depend from claim 5. Accordingly, no *prima facie* case of obviousness has been established with respect to these claims at least due to their dependence.

Claim 6 is further distinguishable from *Besaw* and *Vaid*. Claim 6 recites “[t]he method of claim 5 further comprising ... sending a third query to each of the grid managers in the first list of grid managers [having an inferior relation to the first node] requesting a third list of grid managers having an inferior relation to each grid manager in the first list of grid managers” (emphasis added). The Examiner does not address the recitations of claim 6 by any citation to the art. Instead, the Examiner merely makes the unsupported allegation that “sending multiple and successive ... inquiries to and from servers and clients are well known in the art” (Office Action at p. 10).

Applicants respectfully traverse the Examiner’s taking of Official Notice. Nothing in the cited art teaches or suggests queries that request lists of grid managers with inferior relations to another grid manager. Further, the claimed “sending a third query to each of the grid managers in the first list of grid managers [having an inferior relation to the first node] requesting a third list of grid managers having an inferior relation to each grid manager in the first list of grid managers” (emphasis added) is not well-known or common knowledge in the art. Applicants therefore request that the Examiner either

cite a competent prior art reference in substantiation of these conclusions, or else withdraw the rejections.

III. The Rejection of Claim 4 under 35 U.S.C. § 103(a)

Claim 4 recites, for example, a computer-readable storage device comprising instructions for causing a processor to display a GUI comprising “for each node [representing computers], an expandable structure showing computer grid applications running on a computer represented by the node.” *Besaw*, *Vaid*, and *Excel*, take alone or in combination, fail to render obvious, among other things, this subject matter of claim 4.

The Examiner concedes that neither *Besaw* nor *Vaid* discloses an expandable structure (Office Action at p. 19). *Excel* discloses resizing labeled columns or rows in a spreadsheet (*Excel*, pp. 67-68), and the Examiner relies upon this disclosure in addressing the claimed “expandable structure” (Office Action at p. 19). However, the claimed expandable structure shows “computer grid applications running on a computer” (emphasis added). *Excel*’s spreadsheet does not show computer grid applications running on a computer. Further, claim 4 recites an expandable structure “for each node.” *Excel* does not disclose or suggest a spreadsheet, column, row, or label for each node in a GUI.

As best Applicants can determine, the Examiner’s position appears to be that *Besaw*’s disclosure of computer nodes on a graph could be combined with *Excel*’s alleged disclosure of an “expandable structure.” However, *Excel*’s disclosure is directed toward resizing of spreadsheets. Even assuming the proposed combination were

implemented, at best one the combination could be used to resize the various elements in *Besaw*'s displays, not to show computer grid applications. Further, nothing in *Besaw* suggests any type of expandable structure for each node in the graph.

The Examiner also improperly relies upon Official Notice with respect to claim 4, by again stating that "it is well known in the art for network nodes to represent computers, applications, other networks, and network managers" and "grid networks and managers are functionally equivalent to a distributed system networks and managers" (Office Action at pp. 18-19). Applicants respectfully traverse the Official Notice for at least the reasons discussed above with respect to the rejection of claim 1, and submit that "receiving, with an event handler, a request to view management services running on each of the computers" and generating a display showing the management services running on each of the computers" is not well-known in the art.

As explained above, the Office Action has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the claimed invention and the prior art. Moreover, the Examiner has improperly relied upon Official Notice. Accordingly, no reason has been clearly articulated as to why claim 4 would have been obvious to one of ordinary skill in view of *Besaw*, *Vaid*, and *Excel*. Therefore, a *prima facie* case of obviousness has not been established for independent claim 4 for at least this reason.

III. The Rejection of Claims 1, 3, and 5 for nonstatutory double patenting

The Examiner rejected claims 1, 3, and 5 of this application ("the '886 application") for nonstatutory double patenting over claims 1, 7, and 7 of copending

application no. 10/706,377 ("the '377 application"). Applicants respectfully traverse the provisional double-patenting rejection and requests that the rejection be held in abeyance. The '886 and '377 applications are currently pending and, thus, no double patenting circumstances can arise until a patent is granted. Since no patent has apparently issued from the '886 and '377 applications, Applicants respectfully request that the provisional rejection be held in abeyance and any resolution in the form of a Terminal Disclaimer or otherwise be deferred.

IV. The Finality of the Office Action is Improper

The Examiner has improperly made the Office Action final. MPEP § 2144.03(A) states:

While 'official notice' may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known.

(emphasis added). As discussed above, the Examiner has taken Official Notice with respect to at least 4 distinct propositions, none of which is "capable of instant and unquestionable demonstration as being well-known." Therefore, the finality of the Office Action is improper and not in accordance with MPEP § 2144.03(A).

Applicants also respectfully remind the Examiner of MPEP § 2144.03(C), which states that "If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained" (emphasis added). Applicants have adequately traversed

each taking of Official Notice in the Office Action, and respectfully request the Examiner to either provide documentary evidence or withdraw the rejections in a new non-final Office Action.

V. Conclusion

Applicants respectfully request that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing the claims in condition for allowance. The final action was not only improper but it presented new arguments as to the application of the art against Applicants' invention, and entering the Amendment would allow the Applicants to reply to the final rejections and place the application in condition for allowance.

Applicants further submit that the entry of the amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicants submit that this claimed invention, is neither anticipated nor rendered obvious in view of the cited art. Applicants therefore request the Examiner's reconsideration and reexamination of the application and the timely allowance of the pending claims.

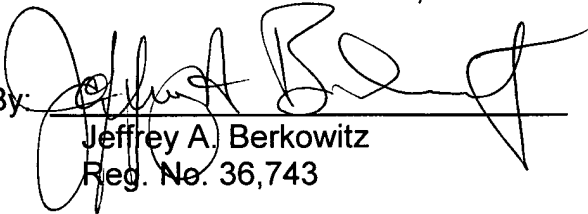
Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

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By:



Jeffrey A. Berkowitz
Reg. No. 36,743